

## Department of Veterans Affairs

## §21.5138

enrolled in a course, courses or program of education leading to a secondary school diploma or an equivalency certificate.

(Authority: 38 U.S.C. 3231(b))

(b) *Monthly rate.* An individual pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate will receive one of two monthly rates.

(1) Unless the individual notifies the Department of Veterans Affairs to the contrary, the monthly rate of his or her educational assistance allowance will be based upon his or her tuition and fees. The Department of Veterans Affairs will make no charge against the entitlement of the individual who is receiving benefits at this monthly rate. The monthly rate will be the rate of tuition and fees being charged to the individual for the course, not to exceed:

- (i) \$376 for full-time training.
- (ii) \$283 for three-quarter time training.
- (iii) \$188 for half-time training.
- (iv) \$94 for quarter-time training.

(2) The individual may elect to receive educational assistance allowance at the monthly rate provided in §21.5138. The Department of Veterans Affairs will make an appropriate charge against the individual's entitlement if such an election is made.

(Authority: 38 U.S.C. 3241, 3491)

(c) *Method of payment.* (1) If the individual's educational assistance allowance is based upon the rate as determined in paragraph (b)(1) of this section, payment shall be made in a lump sum for the term, quarter or semester at the beginning of the month in which training begins.

(2) If the individual elects to have his or her educational assistance allowance computed as provided in §21.5138, payment will be made in the same manner as for any other residence training.

(Authority: 38 U.S.C. 3241)

[47 FR 51746, Nov. 17, 1982, as amended at 50 FR 19933, May 13, 1985]

### §21.5137 Benefit payments and charges against entitlement for taking an approved licensing or certification test.

(a) *Benefit payments.* The amount of educational assistance allowance VA will pay to a veteran or servicemember for taking an approved licensing or certification test, if the veteran or servicemember is entitled to receive such benefit payments, will be the lowest of the following:

(1) The fee the organization or entity offering the test charges for taking the test;

(2) \$2,000; or

(3) The total remaining amount of the veteran's or servicemember's contributions to the fund and the contributions the Secretary of Defense has made to the fund on behalf of the veteran or servicemember.

(Authority: 38 U.S.C. 3222, 3231, 3232(c), 3452(b), 3689)

(b) *Charge against entitlement.* For educational assistance allowance paid for taking an approved licensing or certification test, VA will make a charge against the veteran's or servicemember's entitlement by dividing the amount paid under paragraph (a) of this section by the monthly amount as calculated under §21.5138(c). The calculation will assume that the veteran or servicemember is a full-time student.

(Authority: 38 U.S.C. 3232(c), 3452(b), 3689)

[72 FR 16978, Apr. 5, 2007]

### §21.5138 Computation of benefit payments and monthly rates.

Except as provided in §§21.5136(b)(1) and 21.5137(a), for purposes of this subpart VA will compute benefit payments and monthly rates as provided in this section.

(Authority: 38 U.S.C. 3231, 3233, 3241, 3491, 3680, 3689)

(a) *Computation of entitlement factor.*

(1) For residence training, VA will compute an entitlement factor as follows:

- (i) Enter the number of full months in (1) \_\_\_\_\_ the applicable benefit period.
- (ii) Enter the number of full (a) \_\_\_\_\_ days in excess of the number of full months.

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(iii) Divide line a by 30. Enter the quotient. (2) \_\_\_\_\_

(iv) Total (lines 1 and 2) ..... (3) \_\_\_\_\_

(v) Multiply line 3 by 1 for a full-time student; by .75 for a three-quarter time student; by .5 for a half-time student; or by .25 for a one-quarter time student. Enter the result. (4) \_\_\_\_\_

(This is the entitlement factor.)

(2) For correspondence training, VA will compute an entitlement factor as follows:

(i) Enter the amount of the individual's contributions remaining in the fund. (b) \_\_\_\_\_

(ii) Enter the individual's remaining months of entitlement. (c) \_\_\_\_\_

(iii) Divide line b by line c. Enter the quotient. (5) \_\_\_\_\_

(iv) Enter two times the amount in line 5 (6) \_\_\_\_\_

(v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (d) \_\_\_\_\_

(vi) Enter the individual's remaining months of entitlement. (e) \_\_\_\_\_

(vii) Divide line d by line e. Enter the quotient. (7) \_\_\_\_\_

(viii) Total (lines 5, 6 and 7) ..... (8) \_\_\_\_\_

(ix) Enter the correspondence charges certified by the school. (9) \_\_\_\_\_

(x) Divide line 9 by line 8. Enter the quotient. (10) \_\_\_\_\_

(This is the entitlement factor.)

(3) For apprenticeship and other on-job training, VA will compute an entitlement factor as follows:

(i) Enter the number of full days in the applicable benefit period. (Enter 30 if the benefit period is a full month.). (1) \_\_\_\_\_

(ii) Divide line 1 by 30. Enter the quotient. (2) \_\_\_\_\_

(iii) Multiply line 2 by .75 if the veteran is in the first six months of training; by .55 if the veteran is in the second six months of training; by .35 if the veteran is in a subsequent month of training; and by a pro-rated fraction if one of the veteran's first two six-month periods of training ends during the benefit period. Enter the result. (3) \_\_\_\_\_

(This is the entitlement factor.)

(Authority: 38 U.S.C. 3231, 3233; Pub. L. 96-466, Pub. L. 97-306, Pub. L. 99-576)

(4) For cooperative training, VA will compute an entitlement factor as follows:

(i) Enter the number of full months in the applicable benefit period. (1) \_\_\_\_\_

(ii) Enter the number of full days in excess of the number of full months. (a) \_\_\_\_\_

(iii) Divide line a by 30. Enter the quotient. (2) \_\_\_\_\_

(iv) Total lines 1 and 2 ..... (3) \_\_\_\_\_

(v) Multiply line 3 by .80. Enter the result. (4) \_\_\_\_\_

(This is the entitlement factor.)

(Authority: 38 U.S.C. 3231; Pub. L. 100-689)

(5) For flight training, VA will compute an entitlement factor as follows:

(i) Enter the amount of the individual's contributions remaining in the fund. (a) \_\_\_\_\_

(ii) Enter the individual's remaining months of entitlement. (b) \_\_\_\_\_

(iii) Divide line a by line b. Enter the quotient. (1) \_\_\_\_\_

(iv) Enter two times the amount in line 1. (2) \_\_\_\_\_

(v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (c) \_\_\_\_\_

(vi) Enter the individual's remaining months of entitlement. (d) \_\_\_\_\_

(vii) Divide line c by line d. Enter the quotient. (3) \_\_\_\_\_

(viii) Total (lines 1, 2 and 3) ..... (4) \_\_\_\_\_

(ix) Enter the charges for flight training certified by the school. (e) \_\_\_\_\_

(x) Multiply line e by .60 ..... (5) \_\_\_\_\_

(xi) Divide line 5 by line 4. Enter the quotient. (This is the entitlement factor.) (6) \_\_\_\_\_

(Authority: 38 U.S.C. 3231(f))

(b) *Computation of benefit payment.* Under this section, VA will compute benefit payments as follows:

(1) Enter the entitlement factor. (f) \_\_\_\_\_

(2) Enter the amount of the individual's contributions remaining in the fund. (g) \_\_\_\_\_

(3) Multiply line f by line g. Enter the result. (h) \_\_\_\_\_

(4) Enter the remaining months of the individual's entitlement. (i) \_\_\_\_\_

(5) Divide line h by line i. Enter the quotient. (11) \_\_\_\_\_

(This is the individual's portion.)

(6) Enter two times the amount in line 11. (12) \_\_\_\_\_

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(This is the Department of Veterans Affairs's portion of benefit payments for training completed before January 1, 1982. The Secretary of Defense will contribute this portion of the benefit payment for training that occurs after December 31, 1981.)

- (7) Enter the amount of (j)  
the additional contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual.
- (8) Multiply line f by (k)  
line j. Enter the result.
- (9) Enter the individual's (l)  
remaining months of entitlement.
- (10) Divide line k by line l. Enter (13)  
the quotient.

(This is the Department of Defense's portion for training completed before January 1, 1982. For training completed after December 31, 1981, this is the second part of the Department of Defense's portion.) (38 U.S.C. 3231)

- (11) Total (add lines 11, 12 and 13) .. (14)

- (12) If the veteran is in an apprenticeship or other on-job training and fails to complete 120 hours of training in a month, reduce the amount on line 14 proportionately. In this computation round the number of hours worked to the nearest multiple of eight. Enter the result. (15)

- (13) If the veteran is pursuing certain courses which do not lead to a standard college degree, has excessive absences, and incurred those absences before December 18, 1989, reduce the amount on line 14 sufficiently to avoid paying for any excessive absence. Enter the result. (16)

(Authority: 38 U.S.C. 3233 (1989), 38 U.S.C. 3680(a)(2) (1974); Pub. L. 101-237)

- (14) The benefit payment is either—

- (i) The amount shown on line 14 unless the veteran is in apprenticeship or other on-job training and has failed to complete 120 hours of training in a month during the benefit period in which case the benefit payment is the amount shown on line 15, or the veteran is pursuing certain courses which do not lead to a standard college degree in which case the benefit payment is the amount shown on line 16, or

(Authority: 38 U.S.C. 3233; Pub. L. 99-576)

- (ii) The total amount of the remaining contributions in the fund made by the individual and the VA and the Secretary of Defense on behalf of the individual, whichever is less.

(Authority: 38 U.S.C. 3231; Pub. L. 94-502)

(c) *Monthly rates.* Under this section, VA will compute the monthly rates of payment for individuals in residence training by repeating the calculations in paragraphs (b)(1) through (11) of this section except that instead of entering the entitlement factor on line f, paragraph (b)(1), VA will enter 1 for a full-time student, .75 for a three-quarter time student, .5 for a half-time student, or .25 for a one-quarter time student.

(Authority: 38 U.S.C. 3231)

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 32024, June 19, 1981; 47 FR 51747, Nov. 17, 1982; 48 FR 3369, Jan. 25, 1983; 48 FR 50530, Nov. 2, 1983; 52 FR 3429, Feb. 4, 1987; 53 FR 34498, Sept. 7, 1988; 55 FR 31582, Aug. 3, 1990; 57 FR 38615, Aug. 26, 1992; 58 FR 31911, June 7, 1993; 72 FR 16978, Apr. 5, 2007]

### §21.5139 Computation of benefit payments for incarcerated individuals.

Notwithstanding the provisions of §21.5138, some incarcerated individuals may have their educational assistance allowance terminated or reduced. The provisions of this section shall not apply in the case of any individual who is pursuing a program of education while residing in a halfway house or participating in a work-release program in connection with that individual's conviction of a felony.

(a) *No educational assistance allowance payable to some incarcerated individuals.* VA will pay no educational assistance allowance to an individual who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course where his or her tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and

(3) Has incurred no expenses for supplies, books or equipment.

(Authority: 38 U.S.C. 3231(e))